



U. S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
PREVENTION, PESTICIDE
AND TOXIC SUBSTANCES

Erik Olson
Adrianna Quintero
Natural Resources Defense Council
1200 New York Ave., NW
Suite 400
Washington, D.C. 20005

Fred H. Altshuler
Michael E. Wall
Altshuler, Berson, Nussbaum, Rubin & Demain
177 Post Street, Suite 300
San Francisco, CA 94108

June 28, 2002

RE: STATUS OF AZINPHOS METHYL

Dear Sirs and Madam:

This letter is being sent to satisfy the United States Environmental Protection Agency's ("EPA" or "Agency") commitments with respect to pesticides containing azinphos methyl under the Consent Decree entered into on September 25, 2001 in the case of Natural Resources Defense Council v. Whitman, No. C-99-3701 (N.D. Cal.).

Under the terms of the Consent Decree (as amended), EPA was scheduled to complete an interim Reregistration Eligibility Determination ("IRED") for azinphos methyl by the end of October, 2001. Such a document was signed by EPA on October 30, 2001. In the IRED, the Agency determined that pesticide products containing azinphos methyl, as registered at the time of issuance of the IRED, when used in accordance with the widespread and commonly recognized practices, would have presented unreasonable adverse effects on workers, especially those who enter fields treated with pesticides containing azinphos methyl. EPA also determined in the IRED that under certain identified conditions, a limited number of uses of azinphos methyl could be eligible for a time-limited reregistration of four years, if specific mitigation measures were adopted and data to refine benefits and worker exposure estimates were developed. EPA found that there were differences among the uses of the pesticide, especially as to their risk-benefit balance, and divided them into three categories. For certain uses, EPA found that the economic benefits

were minimal and did not outweigh the risks. EPA concluded, therefore, that those uses should be cancelled without any phase-out period. For a second group of uses, EPA found that although the benefits did not outweigh the risks, their benefits were significant enough that EPA believed a four-year phase-out period was appropriate to allow for transition to alternate control methods, provided that certain mitigation measures were imposed during that four-year period. Finally, for a third category of uses, the Agency found that the benefits outweighed the risks associated with those uses, at least in the short term, provided that certain mitigation measures and other provisions specified in the IRED were adopted. Because the worker risks associated with some of the uses in this category were high, EPA has required, among other data, biomonitoring of workers and will revisit its decision once all required data have been submitted. (See Section IV of the azinphos methyl IRED.)

As required by the Consent Decree (§ 8.a.), EPA also made a determination in the IRED as to whether or not such risks required relatively quick regulatory action. EPA concluded that, for azinphos methyl, relatively quick regulatory action was appropriate to address those risks (IRED at 56). Under the terms of the Consent Decree, if EPA made such a determination in the affirmative, then the Agency was required to provide a draft notice of intent to cancel (NOIC) designed to eliminate the unreasonable adverse effects, to the Scientific Advisory Panel and the U.S. Department of Agriculture no later than eight months after the date of signature of the IRED. In this case, that date would have been June 30, 2002. The Consent Decree also provides that if EPA determines that the unacceptable workers risks would be substantially eliminated through implementation of an effective regulatory instrument that has been finalized before a draft NOIC is issued, EPA is not obligated to issue the draft NOIC and may instead pursue other appropriate regulatory means of addressing any remaining unacceptable worker risks (§ 8.c.). If EPA decided to follow this second course of action, the Consent Decree required EPA to provide a notification in writing to Plaintiffs of the Agency's determination within eight months of the signing of the azinphos methyl IRED.

In May 2002, all registrants of pesticides containing azinphos methyl entered into an agreement with the Agency to address, among other things, the worker risks described in the IRED. The "Agreement Between the Environmental Protection Agency and the Registrants of Pesticide Products Containing Azinphos Methyl" is Attachment 1 to this letter. With minor modifications, this agreement implements the mitigation measures and other provisions, including the disposition of the three categories of uses, that EPA had specified in the IRED as necessary to reduce risks sufficiently to allow for a finding of eligibility for a time-limited reregistration. For a summary of changes to the IRED that impact worker and other risks, and that were largely the result of new information based on comments received during the public comment period, see Appendix 2.

The Agency has determined that the worker risks will be substantially reduced through the immediate cancellations, phase-outs, and risk mitigation measures identified in the May 2002 agreement, and as were identified in the IRED, and is informing you of that determination in accordance with paragraph 9.c. of the Consent Decree.

The majority of the uses for which the Agency has determined that the risks outweigh the benefits

are being voluntarily canceled. For those remaining uses with unacceptable risks, but for which EPA has also determined to have substantial benefits (i.e., “the phase-out” uses), the Agency is dealing with the unacceptable risks associated with these uses by phasing them out over the next four years as well as requiring additional mitigation measures to be imposed during this period. Finally, for those uses that are time-limited, given the mitigation measures that were imposed and data that were required to be generated, EPA does not believe they pose unacceptable risks in the short term. If and when the registrants submit registration amendments to extend the expiration dates, however, EPA will revisit this determination.

Under the May 2002 agreement, the registrants are committed to take various measures to address the occupational risks posed by azinphos methyl. Pursuant to the agreement, the registrants have already requested immediate cancellation of 23 uses of their azinphos methyl products. The registrants further agreed to cancel additional 7 uses, effective as of March 31, 2005 (“phase-out uses”). With the remaining 10 uses, the registrants amended their current azinphos methyl product registrations to expire on October 31, 2005, with limited exceptions (“time-limited uses”). The registration of a time-limited use may continue beyond October 31, 2005 only if (1) the Agency decides to extend such registration based on newly submitted data; or (2) there is a hearing on the Agency’s denial of a timely request to extend such registration, in which case the registration will expire at the end of hearing (if so ordered by the Administrator) but not later than October 31, 2006, unless the Administrative law judge determined that failure to complete the hearing prior to October 31, 2006 was attributed to the Agency or any proponent of denial. Furthermore, the registrants amended their registrations to immediately implement measures to reduce worker risks associated with the remaining phase-out and time-limited uses. These use-specific mitigation measures, which are contained in Appendix D of the attached Agreement, include various reductions in application rates and numbers of applications, the prohibition of aerial application for most remaining uses, and the extension of REIs and PHIs for many uses.

EPA also intends to post this letter [or a similar notification to the public of its determination with respect to azinphos methyl] on the Office of Pesticide Programs’ Internet Website. If you have any questions, please feel free to contact Margaret Rice at (703) 308-8039.

Sincerely,

Lois A. Rossi, Director
Special Review and Reregistration Division
Office of Pesticide Programs

Attachments

cc: Brian H. Lynk, DOJ